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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF GIFT TAX

Versus

KAMRUDDIN M RAVJI

Appearance:

1. GIFT TAX REFERENCE No. 1 of 1995

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 21/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question of law is referred for our opinion in respect of assessment year 1977-78 :-

"Whether, the Appellate Tribunal is right in law and the facts in holding that there was no taxable gift and thereby deleting the taxable gift of Rs.61,954/- ?"

2. We have heard Mr MR Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The assessee made a gift of Rs.5000/- in cash on 25.3.1976 to Khurshid Trust. In the gift tax return, the assessee disclosed the above gift and claimed exemption of Rs.5,000/- and, therefore, filed nil return. However, the assessee also filed a note alongwith the return disclosing that he had made a gift of half share on 50% profit sharing in M/s M Ravji & Co.. However, the gift of share in the partnership referred to above was not liable to gift tax proceedings. The Gift-tax Officer in the course of assessment called upon the assessee to produce evidence in support of his submission. The assessee was also asked to file a valuation of goodwill etc. The assessee submitted by letter dated 27.3.1982 that the assessment of 50% of share of the assessee in the partnership firm was for consideration and, therefore, the transaction did not attract gift tax; the firm had no goodwill; the goodwill of the firm was not in fact transferred and that the goodwill of the firm could not be valued separately. The assessee also produced a copy of the deed of assignment by which he had assigned 50% of his share in the partnership firm of M/s M. Ravji & Co. in favour of Khurshid Trust. The Gift-tax Officer held that the transaction in question amounted to gift and valued the tax at Rs.92,250/-. In appeal, the Deputy Commissioner of Wealth-tax (Appeals) held that the transaction was a gift, but the gift was valued at Rs.61,550/-. The assessee, therefore, went in appeal before the Tribunal which held that the transaction in question did not amount to gift because in the present case the assessee had introduced a new partner to assist the firm in carrying out the business and the new partner had agreed to share the losses and liabilities of the firm. It constituted adequate consideration. The Tribunal further held that no gift tax is leviable when share of interest in a firm is relinquished for commercial consideration.

4. It is necessary to note that the Gift-tax Officer held that gift tax was leviable on the value of the gift on the basis of goodwill at Rs.92,250/-. This Court has held in Commissioner of Gift-tax vs. Punjabhai Kalabhai,

(2000) 243 ITR 223 that there is no doubt that goodwill is an asset of a firm and like any other asset of the firm is capable of being transferred, but at the same time, retirement of a person from a firm and taking accounts at that time does not involve any transfer of property as such. It is a matter of settling accounts while parting company. What consideration prevailed for determining a sum payable to the outgoing partner is a matter of settlement between them and a question of fact.

In the instant case, the assessee did not retire from the firm, but he merely assigned 50% of his share in the partnership firm of M/s M. Ravji & Co. in favour of Khurshid Trust. Hence, there was no question of transfer of goodwill of the firm. The donee, i.e. a new partner, was inducted to assist the firm in carrying out the business and the new partner has agreed to share the profits and losses of the firm. Hence, the Gift-tax Officer was not justified in treating the transaction as a gift on the basis of the value of the goodwill when the goodwill was not transferred in the first place.

5. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-